IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/08/2002

Coram

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice K. SAMPATH

A.S. No.681 of 1984 and A.S.No. 1146 of 1986
and connected C.M.Ps.

A.S. No.681 of 1984

Anuppanady Koodayee Ammal
Family Trust,
through its sole trustee
O. Meenakshia Pillai. .. Appellant

-Vs-

1. Koodayee Ammal
2. A.S. Veeramakali alias Mani
3. John Batcha Sahib
4. M.S. Loganathan
5. M.S. Krishnan
6. M.S. Sorna Iyer
7. Damayanti .. Respondents

(7th respondent brought on
record as L.R. of the deceased
4th respondent as per order of
the Court dated 17.7.2001 made in
C.M.P. Nos.8707 to 8709 of 2000)

A.S. No.1146 of 1986 :

O. Meenakshia Pillai .. Appellant

vs.

M. Koodayee Ammal .. Respondent

PRAYER : A.S. No.681 of 1984 against the Judgment and Decree dated 16
.3.1984 on the file of the Subordinate Judge, Madurai in O.S. No.469 of 1981.

A.S. No.1146 of 1986 against the Judgment and Decree dated 16.3.1984
on the file of the Principal Subordinate Judge, Madurai in O.S. No.2 35 of

1981.

!For Appellant : Mr. K.S. Ahmed

^For Respondents : Mr. K.R. Thiagarajan (For R-1)
Mr. M.V. Krishnan (For R-5)

:J U D G M E N T

P. SHANMUGAM, J.

The above two appeals have been preferred against a common judgment, by the plaintiff in A.S. No.681 of 1984 and the first defendant in A.S. No.1146 of 1986.

2. The first suit O.S. No.235 of 1981 for a partition was decreed by the learned Subordinate Judge. The second suit O.S. No.469 of 1981 was for a declaration that the plaintiff is the sole trustee of the family trust and for possession of the items of the suit property. The second suit was dismissed and the appeal is against this common judgment.

3. The facts of the case are stated hereunder. The parties are described as per their rankings in the partition suit. The plaintiffKoodayee Ammal's husband Muthukinglinatha Pillai and the first defendant O.Meenakshia Pillai are brothers and sons of one Oorkavalan Pillai. For better appreciation, the genealogy of the parties is given below :

T.V. MEENAKSHIA PILLAI
_____|_____
| |
| |
Ponnammal (died) Koodayee Ammal (died)
1st wife 2nd wife
(Paternal Aunt of (No issues to Koodayee Ammal)
Koodayee Ammal)
|
|
Muthukaliammal
W/o. Ramalingam Pillai
(brother of Koodayee Ammal)
|
|
Poochendu @ Koodayee Ammal
W/o. Oorkavalan Pillai
Son of Muthupillai -
Brother of T.V. Meenakshi Pillai
|
|_____
| |
O. Meenakshia Pillai Muthukinglinatha Pillai
Plaintiff in O.S. No.469/81 (died 31.1.80)

and 1st Defendant in Koodayee Ammal wife of
O.S. No.235/81 Muthukinglinatha Pillai
Rajalakshmi (died)
daughter of
Muthukinglinatha Pillai
Plaintiffs 1 & 2 in
O.S. No.235/81
1st Defendant in
O.S. No.469/81

The suit properties are claimed to be the self-acquired properties of Koodayee Ammal, the second wife of T.V. Meenakshia Pillai. Koodayee Ammal executed a trust-dharmam settlement under Ex.B.13 dated 20.8.1 943. As per this settlement, Koodayee Ammal appointed herself as trustee for performing the dharmam of poor feeding in the month of Margazhi on the Egadasi Day at the Bajanai Madam and also to perform pooja of her family deity in Keelamuthu Kinglinatha Swamy Kovil at Arukkanedi. Pongal was prepared everyday in the month of Margazhi and was to be offered to the God and then, to the devotees. She appointed herself as a trustee during her lifetime and thereafter, her grandchildren namely O. Meenakshia Pillai and Muthu Kinglinatha Pillai to continue the performance of poojas. Until they attain majority, their mother Poochendu @ Koodayee Ammal was to look after and perform the poojas. The trust deed prohibited alienation of the properties. There were seven items of properties covered under the trust deed, including the house properties referred as suit properties in these suits.

4. The case of the plaintiff in the partition suit, viz., the wife of Koodayee Ammal's grandson, i.e. Muthukinglinatha Pillai, was that the settlement deed was not a trust deed and in any event, the trust has ceased to exist and they did not e poojas as ordained in the trust; the properties were partitioned by the two brothers after the demise of Koodayee Ammal as per the partition deed dated 27.7.1971 and the brothers were in respective enjoyment of the properties by making mutation of records, paying kists and effecting alienations. Muthukinglinatha Pillai died on 31.1.1980, leaving behind his wife Koodayee Ammal, the first plaintiff in the partition suit and her minor daughter. The case of the plaintiff, Koodayee Ammal was that after the death of her husband, O. Meenakshia Pillai tried to interfere with her possession of the house property and had occupied the upstairs portion of the house of the 'B' schedule property in the partition suit and that he had also leased out the downstairs portion of the property to defendants 2 and 3, who are running a hotel business therein. According to her, as O. Meenakshia Pillai failed to give effect to the partition deed, the suit for partition came to be filed.

5. The case of the defendant O. Meenakshia Pillai, in the suit for a declaration that he is the sole trustee, is that late Koodayee Ammal had created a trust by name Anuppanady Koodayee Ammal Trust dated 2 0.8.1943 and after her lifetime, the brothers namely O. Meenakshia Pillai and Muthukinglinatha Pillai are the trustees, and after the demise of Muthukinglinatha Pillai, O. Meenakshia Pillai has become the sole trustee; the wife of Muthukinglinatha Pillai, who has filed the suit for partition, has

become disqualified to be the trustee since according to him, she had gone astray and was living in adultery; besides, he has stated that she had set up her separate claim over the trust property and in the above circumstances, he had prayed for a declaration that he is the sole trustee and for recovery of possession.

6. This claim of O. Meenakshia Pillai was opposed by the plaintiff in the partition suit, inter alia, contending that there was no trust and in any event, it has ceased to exist and that the parties have dealt with their property as their own. Whereas, the case of O. Meenakshia Pillai is that the trust continues and that there was a total prohibition of alienation and that Koodayee Ammal had become disqualified to be in charge of the trust and that therefore, the suit for declaration that O. Meenakshia Pillai is the sole trustee is maintainable.

7. On these pleadings, the learned Subordinate Judge, after allowing the marking of Exhibits A.1 to A.9 and B.1 to B.67 and upon examination of P.W.1 as well as D.Ws.1 to 6, found that even though in Ex.B.13 it is stated that it is a trust deed, in effect, no dharmam was continued and that both the plaintiff as well as the first defendant have alienated the properties of the trust and that the brothers have partitioned the properties by a family arrangement dated 27.7.1971 and have made further alienations by virtue of the partition and that after the demise of Muthukinglinatha Pillai, O. Meenakshia Pillai had unlawfully entered the suit properties not allotted to his share and therefore, he was directed to hand back possession of the suit property. In effect, the suit for partition and recovery of possession was decreed and the suit for declaration that O. Meenakshia Pillai as the sole trustee and for recovery of possession was dismissed. O. Meenakshia Pillai is now the appellant in both these appeals.

8. We have heard the counsel elaborately and considered the matter carefully.

9. Though initially Ex.B.13, settlement/trust deed contained seven items of properties comprised in the trust namely 28 cents of land in Patta No.351, S.No.37/6 at Anuppanady Village and 51 cents of land in Patta No.1417 at Karupputhalai Village, these two items of properties did not form part of the schedule of properties in either of these suits. The properties admittedly available as on date for the performance of poojas under the alleged trust for partition are only the following two items of properties :

(i) Building at Door Nos.83 & 84 at Nadutheru, Anuppanady in T.S. No.783, valued at Rs.10,000/-
(ii) Building at Door Nos.81 & 82 at Nadutheru, Anuppanady in T.S. No.78, measuring an extent of 25' x 25'.

10. All the remaining items of properties were subject to alienations by the parties. Ex.A.9 is a document of family arrangement, by which O. Meenakshia Pillai and Muthukinglinatha Pillai have agreed to partition the trust properties. In this deed, it is recited that they did not want to continue in enjoyment of the trust properties in common and after a

negotiation with the mediators and as per their resolution, they have divided the trust property between themselves absolutely as 'A' and 'B' schedule properties. They have agreed to perform the poojas from the income of their properties. It is also recited that the trust properties were already subject matter of mortgage and that the same shall be discharged by the second party namely Muthukinglinatha Pillai. The said family arrangement had been given effect to, as evidenced by Exhibits B.1, B.2, B.6, B.8, B.15, B.63, B.64, B.6 6 and B.67, the sale deeds executed by Muthukinglinatha Pillai and later, by his wife Koodayee Ammal. O. Meenakshia Pillai was also party to a mortgage of the trust property, Ex.B.7 and the exchange, Ex.B.1 9. O. Meenakshia Pillai, who is aware of all these alienations, did not choose to question the same. On the other hand, in the family partition deed itself, it is mentioned that they have mortgaged one item of the trust property. The appellant has admitted that he had alienated Item 2 of 'A' schedule property in the partition suit for the improvement of Item 1. It is admitted that excepting some of the alienations, all the alienees are not parties before this court. It is also not in dispute that these alienations were made by referring to the family partition deed and it is also not in dispute that all the sales made and the purchases effected were bonafide. The defendant alienees have all pleaded that they were bonafide purchasers for value. Therefore, assuming that there was a trust created, the last surviving trustees namely O. Meenakshia Pillai and Muthukinglinatha Pillai have, on their own showing, become disqualified to be the trustees on their partition of the trust properties and the alienations and mortgages effected by them, which are admittedly contrary to the trust deed.

11. In the above background, the findings of the court below that the trust was not continued and that there was no evidence whatsoever to prove that the dharmam as contemplated under the trust deed was performed cannot be fully correct. Even though substantial properties were initially endowed for the alleged dharmam namely to feed the poor on the Egadasi Day at Bajanai Madam and to prepare Pongal in the month of Margazhi and distribute it to the devotees at Keelamuthu Kinglinatha Swamy Kovil, they are the only expenses to be incurred as the trust and it is not stated as to how the remaining income of the properties of the trust had to be utilised. Therefore, considering a small fraction of expenses that would be needed to perform the above said dharmams and in the absence of any evidence to show that the trustees performed the Kaingaryams and in the facts of the case that most of the properties have been alienated, we have to say that the properties were only burdened with trust and that there was no total or absolute dedication. It was only a partial dedication and the trustees were continuing to perform the charities from out of the income and hence, there was no bar for alienation as long as the trust obligations were performed.

12. In the facts and circumstances of the case that all the trust properties are not available now since the trustees themselves have alienated the properties, it must be held that the purpose of the trust namely to incur expenses for distribution of Pongal and to feed the poor on Egadasi Day could be performed from out of the net residue of the rents, profits and other income that can be derived from the trust properties which are now in the hands of both the plaintiff and the defendants. In the light of our

finding that both the trustees have alienated the properties of the trust and that they also contend that the dharmam is being performed by them as ordained, it will not be possible for this court to declare O. Meenakshia Pillai as the sole trustee and that Koodayee Ammal has become disqualified to be the trustee of the properties. Therefore, they are entitled to perform the dharmam with the income derived from the properties in their possession without making further alienations. In other words, the partition deed effected by the brothers is to be recognised for the convenient possession of the properties and better performance of the trust. O. Meenakshia Pillai shall hand over possession of the properties taken over by him contrary to the terms of the partition deed. Koodayee Ammal shall not make any further alienations and shall continue to perform the dharmam for alternative years. O. Meenakshia Pillai will perform the dharmam for the period commencing from 1.1.2003 to 31.12.2 003 and Koodayee Ammal shall perform the dharmam from 1.1.2004 onwards and then, it shall be continued in turn every year alternatively by both of them. Any further alienation of the trust properties shall be construed as illegal.

13. For the above reasons, the judgment and decree of the Subcourt in O.S. No.469 of 1981 is modified and A.S. No.681 of 1984 is allowed in part. O. Meenakshia Pillai and Koodayee Ammal are hereby declared to be the trustees in turn for alternative years and are directed to perform the dharmam as stated above. The decree in O.S. No.235 of 1981 is hereby confirmed and A.S. No.1146 of 1986 is dismissed. O. Meenakshia Pillai is directed to hand over possession of the portion of properties bearing Door Nos.81 and 82, Nadutheru, Anuppanedy Village, Madurai Town. However, there will be no order as to costs. Consequently, the connected C.M.Ps. are closed.

14..08..2002

Index : Yes (P.S.M.,J.) (K.S.,J.)
Internet : Yes

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To

1. The Principal Subordinate Judge,
Madurai (With Records).

2. The Record Keeper,
V.R. Section,
High Court,
Chennai.